

BOARD OF COUNTY COMMISSIONERS
Agenda Item Summary

Meeting Date January 19, 2005

Division County Attorney

AGENDA ITEM WORDING

Approval of second amended settlement agreement in Richard Osborne, Trustee and Conch Contrada, L.C. v. Monroe County, CA K 01-108.

ITEM BACKGROUND

The County previously has settled this inverse condemnation suit via a settlement agreement which permitted development on the property within certain time constraints. Currently, Conch Contrada has until July 13, 2005 to initiate development of the approved mixed use commercial facility, or in the alternative, a 7,500 square foot restaurant. Due to health problems of the principal and other issues, Conch Contrada is requesting a one year extension of that deadline.

PREVIOUS RELEVANT BOCC ACTION

In July of 2002, the Board approved a settlement agreement in this litigation. The Board approved an amended settlement agreement in May of 2003.

CONTRACT/AGREEMENT CHANGES

Extends for one year the right of Conch Contrada to initiate development.

STAFF RECOMMENDATIONS

Both legal staff and growth management staff recommend approval.

TOTAL COST	0.00	BUDGETED	Yes	No
------------	------	----------	-----	----

COST TO COUNTY	0.00	SOURCE OF FUNDS	
----------------	------	-----------------	--

APPROVED BY: County Attorney ■ OMB/Purchasing ! Risk Management !

DIVISION DIRECTOR APPROVAL:

John R. Collins 01/05/05
JOHN R. COLLINS

DOCUMENTATION: Included

AGENDA ITEM # B-5

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL
CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

RICHARD M. OSBORNE, as Trustee;
and CONCH CONTRADA, L.C., a
Florida Limited Liability Company,
Plaintiff/Petitioners,

Case No. CA-K-01-108

v.

MONROE COUNTY, a political
subdivision of the State of Florida;
and JOSEPH PASKALIK, in his official
capacity as Building Official,
Defendant/Respondents

SECOND AMENDED SETTLEMENT AGREEMENT AS TO CONCH CONTRADA, L.C.

Plaintiff CONCH CONTRADA, L.C., a Florida Limited Liability Company ("Conch Contrada"), and Defendants, MONROE COUNTY, a political subdivision of the State of Florida ("Monroe County"), and JOSEPH PASKALIK, in his official capacity as Building Official ("Paskalik"), (collectively, the "Parties"), previously resolved their differences which gave rise to the above-styled action, wherein the parties agreed to settle the matter between them upon the terms and conditions recited in paragraphs 2, 3, and 5 in the Settlement Agreement dated July 17, 2002, hereinafter "Original Settlement Agreement," attached hereto as Exhibit "A".

1. The parties agree to amend the (first) Amended Settlement Agreement as follows:

a. Paragraph 5 is amended to now read:

Conch Contrada agrees to submit an application for Amended Conditional Use Order that reflects the intended change in use, should Conch Contrada decide to develop the subject property with an alternative use(s). Upon approval of the Amended Conditional Use Order by the Planning Director,

and in accordance with the development orders referred to in Paragraph 2 of the Original Settlement Agreement, Monroe County agrees to process promptly upon submittal the application for building permit by Conch Contrada or its assigns for construction of one 7,500 square foot restaurant, or as an alternative, a 7,500 square foot medium-intensity, mixed use, retail and/or office/professional use facility in ROGO Year 13 or 14 (July 14, 2005 - July 13, 2006).

2. The parties further agreed that no provision in this agreement shall exempt Plaintiff Conch Contrada LC from any requirements imposed by statute and/or ordinance to connect to a central sewage system when one becomes "available" as that term is defined by statute and/or ordinance.
3. Plaintiff Conch Contrada, in cooperation with Monroe County, will prepare and submit to the Court pleadings or notice required to address the Amended Settlement Agreement. Conch Contrada shall pay any costs incurred as a result of filing this Second Amended Settlement Agreement and any associated pleadings or notices with the exception that each party shall bear its own attorney's fees.
4. All parties acknowledge that the original agreement was entered into for the purpose of settling pending litigation and that this Second Amended Settlement Agreement does not constitute an admission or evidence that any actions of Monroe County or its employees that Plaintiffs Complain of were unlawful, unconstitutional or deprived Plaintiffs or any others of any rights or property.
5. All other terms of the Settlement Agreement dated July 17, 2002, and the (first) Amended Settlement agreement which was approved by the Board on or about

May 21, 2003, especially as it pertains to Conch Contrada, L.C., shall remain in full force and effect.

6. This Amended Agreement shall not be valid and binding upon the parties until approved by the Court and incorporated into a Second Amended Final Judgment entered by the Court in these proceedings.
7. Until this Second Amended Settlement Agreement has been approved by the Court pursuant to the preceding paragraph, the Original Settlement Agreement and Judgment previously entered, and any subsequent approved amendments or modifications shall remain in full force and effect.

ATTEST:
DANNY L. KOLHAGE
CLERK:

BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk
Dated: _____

Dixie Spehar, Mayor of
Monroe County

MONROE COUNTY BLDG. OFFICIAL

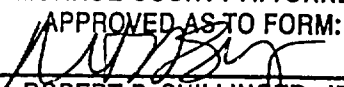
By: _____
Joseph Paskalik

Signature of Witness

CONCH CONTRADA, LC

By: _____
Libby Trevor

Printed Name of Witness

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

ROBERT B. SHILLINGER, JR.
ASSISTANT COUNTY ATTORNEY
Date 7-4-03